

**Letter of Findings: 01-20190163  
Individual Income Tax  
For Tax Year 2013**

**NOTICE:** IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

**HOLDING**

Ex-Wife abandoned her Indiana domicile and established a new one in Ohio. The fact that her name was mistakenly not removed from her prior Indiana home's property records did not negate her efforts, nor did it expose her to Indiana individual income tax.

**ISSUE**

**I. Individual Income Tax - Domicile.**

**Authority:** IC § 6-1.1-12-37; IC § 6-3-2-1; IC § 6-3-1-12; IC § 6-8.1-5-1; *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); *Indiana Dep't of State Rev. v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Croop v. Walton*, 157 N.E. 275 (Ind. 1927); *State Election Bd. v. Bayh*, 521 N.E.2d 1313 (Ind. 1988); [45 IAC 3.1-1-22](#); [50 IAC 24-2-5](#).

Taxpayer protests the imposition of Indiana income tax.

**STATEMENT OF FACTS**

Taxpayer lives and works in Ohio. In a letter dated August 16, 2018, the Indiana Department of Revenue ("Department") notified Taxpayer that "[b]ased on information reported to the [Department], you may have unreported income for tax year 2013." The letter went on to request that Taxpayer file an Indiana individual income tax return or contact the Department explaining why Taxpayer was not required to file a 2013 Indiana return. Taxpayer contacted the Department and explained that she lived in Ohio in 2013, therefore she did not believe she owed Indiana income tax. On September 13, 2018 the Department contacted Taxpayer again explaining that she "established [her] domicile in Indiana . . . by taking the Homestead Exemption deduction on [her] property at [Indiana address]." By doing so, Taxpayer had effectively claimed the Indiana property to be her "principal place of residence," and therefore owed Indiana income tax. The Department followed this letter up with a proposed assessment for 2013 Indiana income tax dated November of 2018.

Taxpayer timely protested the assessment and submitted an explanation and documentation to support her protest. Taxpayer did not provide a Protest Submission Form with her protest. After speaking with the Taxpayer, the Department has written this Letter of Findings, which is based both on discussions with Taxpayer, documentation Taxpayer provided, and other documentation in the file. Additional facts will be provided as necessary.

**I. Individual Income Tax - Domicile.**

**DISCUSSION**

Based on information available to the Department, Taxpayer was assessed Indiana individual income tax for tax year 2013. Taxpayer protested the assessment, asserting that she left Indiana and moved to Ohio in 2011, she lived and worked in Ohio in 2013, and continues to live and work in Ohio.

All tax assessments are prima facie evidence that the Department's claim for the tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); *Lafayette Square Amoco, Inc. v. Indiana*

*Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463,466 (Ind. 2012). Thus, the taxpayer is required to provide documentation explaining and supporting its challenge that the Department's assessment is wrong. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *see also Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012). When an agency is charged with enforcing a statute, the jurisprudence defers to the agency's reasonable interpretation of that statute "over an equally reasonable interpretation by another party." *Indiana Dep't of State Rev. v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014).

Indiana imposes a tax "upon the adjusted gross income of every resident person, and on that part of the adjusted gross income derived from sources within Indiana of every nonresident person." IC § 6-3-2-1(a). Pursuant to IC § 6-3-1-12, a resident "includes (a) any individual who was domiciled in this state during the taxable year, or (b) any individual who maintains a permanent place of residence in this state and spends more than one hundred eighty-three (183) days of the taxable year within this state. . . ." In other words, a resident includes individuals who are **domiciled** in Indiana or **maintain a permanent place of residence in Indiana and then spend more than 183 days in Indiana**.

Taxpayer lived and worked in Ohio for the entire tax year in question, therefore she did not spend more than 183 days in Indiana in 2013. Thus, to be considered a resident of Indiana, Taxpayer must have been **domiciled** in Indiana.

Domicile is defined by [45 IAC 3.1-1-22](#), which states:

For the purposes of this Act, **a person has only one domicile at a given time** even though that person maintains more than one residence at that time. **Once a domicile has been established, it remains until the conditions necessary for a change of domicile occur.**

**In order to establish a new domicile, the person must be physically present at a place, and must have the simultaneous intent of establishing a home at that place. It is not necessary that the person intend to remain there until death; however, if the person, at the time of moving to the new location, has definite plans to leave that new location, then no new domicile has been established.**

**The determination of a person's intent in relocating is necessarily a subjective determination.** There is no one set of standards that will accurately indicate the person's intent in every relocation. **The determination must be made on the facts present in each individual case.** Relevant facts in determining whether a new domicile has been established include, but are not limited to:

- (1) Purchasing or renting residential property.
- (2) Registering to vote.
- (3) Seeking elective office.
- (4) Filing a resident state income tax return or complying with the homestead laws of a state.
- (5) Receiving public assistance.
- (6) Titling and registering a motor vehicle.
- (7) Preparing a new last will and testament which includes the state of domicile.

**(Emphasis added).**

Indiana law further defines "[h]omestead" as "an individual's place of residence . . . that is located in Indiana" and that "the individual owns . . . ." IC § 6-1.1-12-37(a)(2). "'Principal place of residence' means an individual's true, fixed, permanent home to which the individual has the intention of returning after an absence." [50 IAC 24-2-5](#). A taxpayer is entitled to claim a deduction, known as a homestead deduction (or exemption), against taxes imposed on his or her homestead property pursuant to IC § 6-1.1-12-37(e). When the taxpayer is no longer qualified for the homestead deduction (or exemption), the taxpayer must notify the auditor of the county where the homestead is located within sixty days after the date of that change. IC § 6-1.1-12-37(f).

Thus, a new domicile is not necessarily created when an individual moves to an address outside Indiana. Instead, the individual must move to the new non-Indiana address and have intent to remain at that non-Indiana address.

For example, in *Croop v. Walton*, 157 N.E. 275 (Ind. 1927), a taxpayer who was domiciled in Michigan sold his home in Michigan and moved to a new residence in Indiana where he and his wife lived for several years for the benefit of his wife's health. The taxpayer lived in the Indiana home "on account of the mental and physical

condition of his wife, and continued to occupy it until such time as she could safely return to [Michigan] to live." *Id.* at 276. The court concluded that, based on the level of activity he maintained in Michigan and lack of intention to abandon his domicile, taxpayer did not change his domicile from Michigan to Indiana. The court explained, in relevant part, that:

"If [a] taxpayer has **two residences in different states**, he is **taxable at the place which was originally his domicile, provided the opening of the other home has not involved an abandonment of the original domicile and the acquisition of a new one.**"

"[D]omicile" . . . is the place with which a person has a settled connection for legal purposes, either because his home is there or because it is assigned to him by the law, and is **usually defined as that place where a man has his true, fixed, permanent home, habitation, and principal establishment, without any present intention of removing therefrom, and to which place he has, whenever he is absent, the intention of returning.**

*Id.* at 277. (Internal citations omitted). (**Emphasis added**).

In explaining the difference between "residence" and "domicile," the court in *Croop* stated:

'Domicile' "is a residence acquired as a final abode. To constitute it there must be (1) residence, actual or inchoate; (2) the nonexistence of any intention to make a domicile elsewhere." "The domicile of any person is, in general, the place which is in fact his permanent home, but is in some cases the place which, whether it be in fact his home or not, is determined to be his home by a rule of law."

**"Residence is preserved by the act, domicile by the intention." "Domicile is not determined by residence alone, but upon a consideration of all the circumstances of the case." "While a person can have but one domicile at a time, he may have concurrently a residence in one place . . . and a domicile in another."**

To effect a change of domicile, **there must be an abandonment of the first domicile** with an **intention not to return to it**, and there must be **a new domicile acquired by residence elsewhere** with an **intention of residing there permanently, or at least indefinitely.**

*Id.* at 277-78. (Internal citations omitted). (**Emphasis added**).

Subsequently, in *State Election Bd. v. Bayh*, 521 N.E.2d 1313 (Ind. 1988), the Indiana Supreme Court further considered the meaning of "domicile" in determining that Mr. Bayh met the residency requirement for the office of Governor. The court concluded that Mr. Bayh's domicile remained in Indiana even though he moved to different states for various reasons for many years. The court explained, in pertinent part:

Once acquired, domicile is presumed to continue because "every man has a residence somewhere, and ... he does not lose the one until he has gained one in another place." Establishing a new residence or domicile terminates the former domicile. **A change of domicile requires an actual moving with an intent to go to a given place and remain there. "It must be an intention coupled with acts evidencing that intention to make the new domicile a home in fact.... [T]here must be the intention to abandon the old domicile; the intention to acquire a new one; and residence in the new place in order to accomplish a change of domicile."**

Residency requires a definite intention and "evidence of acts undertaken in furtherance of the requisite intent, which makes the intent manifest and believable." **Intent and conduct must converge to establish a new domicile.**

*Id.* at 1317-18 (Ind. 1988). (**Emphasis added**).

In the instant case, Taxpayer provided documentation that she lived and worked in Ohio during the tax year at issue. Taxpayer lived in Indiana until May of 2011, at which time she moved to Ohio. Taxpayer left Indiana as a result of a divorce. The divorce decree was filed in an Indiana county in December of 2011. As a part of the divorce, Taxpayer signed a Quitclaim Deed in which she granted her ex-husband their home in Indiana. In return, Taxpayer was released from any "right, title, interest, and claim" to the property. The Quitclaim Deed listed Taxpayer's address as an Ohio address. The Deed was signed by Taxpayer in May of 2012. Due to circumstances outside of Taxpayer's control, the Deed was not filed in Indiana until October of 2018. The

Department confirmed that Taxpayer's name has been removed from the property's property record card.

Taxpayer provided bank statements to show that she lived at the Ohio address listed on the Quitclaim Deed from May of 2011 until May of 2013 at which time she married her new husband. Taxpayer and her new husband lived in Ohio in 2013 and have remained there. Taxpayer and her new husband filed a joint Federal return in 2013, listing Ohio as the home state on their address. They also filed an Ohio income tax return in 2013. Taxpayer also had an Ohio driver's license which was issued in 2012 and expired in 2015, and another which was issued in 2015 and expires in 2019. Taxpayer is registered to vote in Ohio as of 2012 and her vehicle was registered in Ohio from 2012 to 2016. Further, Taxpayer had utilities and phone records, both of which confirmed that she lived in Ohio.

In 2013 Taxpayer had a W-2 and 1098-E listing her Ohio address. She also had a 1098 with her Indiana address. A form 1098 is used to report mortgage interest as an itemized deduction on the Federal return. Though Taxpayer received a mortgage interest statement for her prior Indiana home in 2013, she did not deduct this interest, because she and her former husband took the standard deduction in 2013. Because the Quitclaim Deed was not filed until 2018, the Department believes that Taxpayer received the Indiana 1098 in error.

Taxpayer and her current husband claimed the Ohio homestead exemption on their Ohio home in 2013. Taxpayer's ex-husband took the homestead exemption deduction on the Indiana home in 2013, which he was entitled to do per the Quitclaim Deed. Because the Deed wasn't filed until 2018, Taxpayer's name was listed on the property's records, thus it appeared as though she benefitted from the homestead exemption in Indiana and Ohio. As mentioned above, when a taxpayer claims the homestead exemption, they are, in effect, making a statement that this home is their "principal place of residence." However, this situation is unique given that Taxpayer had released her rights to the property in her divorce. Through no fault of her own, the Quitclaim Deed relinquishing her rights wasn't filed until 2018. Taxpayer was not responsible for paying property tax on the Indiana home, thus she received no benefit from the Indiana homestead exemption.

The totality of the facts and circumstances here show that Taxpayer ended her Indiana domicile in 2011, established a new domicile in Ohio, and remains at that domicile. The fact that her name was not removed from her prior Indiana home does not negate the actions Taxpayer took to abandon her Indiana domicile and establish a new one in Ohio. Therefore, Taxpayer has met the burden imposed under IC § 6-8.1-5-1(c) of proving the proposed assessment wrong.

### **FINDING**

Taxpayer's protest is sustained.

April 22, 2019

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An [html](#) version of this document.